

**OPINION  
58-203**

May 12, 1958           (OPINION)

**TAXATION**

RE:   Fuels - Gasoline - Refunds

This is in answer to your request of May 8, 1958, for an opinion concerning the question of whether gasoline tax is refundable where the gasoline is purchased by implement dealers for use in tractors for demonstration purposes.

Section 57-5001 of the 1957 Supplement to the North Dakota Revised Code of 1943 states in part as follows:

After December 31, 1946, any person, firm or corporation who shall buy or use any motor vehicle fuel as defined in subparagraph 2 of section 57-4101, Revised Code of North Dakota for 1943, for agricultural or industrial purposes, except motor vehicle fuel used in motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of the State of North Dakota on which the motor vehicle fuel tax has been paid, shall be reimbursed or repaid within the time hereinafter provided, the amount of such tax paid by him upon the presentation to and the approval of the state auditor of a claim for refund.\* \* \*

You will note that the motor vehicle fuel that is purchased by a person, firm, or corporation must be used for either agricultural or industrial purposes before a refund may be approved. The purpose in demonstrating tractors is neither agricultural nor industrial, but is rather the commercial purpose of selling tractors.

Since the gasoline purchased by implement dealers for use in tractors for demonstration purposes is not included within section 57-5001 of the 1957 Supplement to the North Dakota Revised Code of 1943, it is the opinion of this office that such refunds may not be approved.

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